

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

WEBMD LLC,	)	
	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION NO. _____
	)	
	)	<b><u>DEMAND FOR JURY TRIAL</u></b>
	)	
EVERYDAY HEALTH MEDIA LLC,	)	
	)	
Defendant.	)	
	)	

**PLAINTIFF WEBMD LLC’S COMPLAINT  
FOR TRADEMARK INFRINGEMENT, UNFAIR COMPETITION, AND DILUTION**

**I. INTRODUCTION**

1. This case involves a concerted campaign by the defendant, Everyday Health Media LLC (“Everyday Health”), a subsidiary of Everyday Health, Inc., to, among other things, use the famous WebMD® trademark of the plaintiff, WebMD LLC (“WebMD”), in order to deceive consumers about the source of health information on Everyday Health’s website and mislead advertisers about traffic to that website and the value of Everyday Health’s brand.

2. In particular, Everyday Health has systematically used WebMD’s established and trusted trademark on Everyday Health’s web pages to suggest to consumers that the source of the health information that Everyday Health is displaying is from or associated with WebMD. In fact, Everyday Health has no relationship to WebMD, no license from WebMD, and the source of Everyday Health’s information is not WebMD.

3. Indeed, as part of this scheme, Everyday Health has targeted one of the most popular aspects of WebMD’s website, the WebMD Symptom Checker, where consumers can

evaluate symptoms that they or others are suffering as well as potential causes and treatment options. Everyday Health has been using the WebMD trademark to deceive consumers into believing that they are searching the acclaimed WebMD Symptom Checker. In fact, those consumers are instead diverted to Everyday Health's "symptom checker" so as to drive up Everyday Health's website page impressions and mislead advertisers into paying Everyday Health for visitors who went to Everyday Health's site only because they were deceived into doing so.

4. As part of this campaign, Everyday Health pays for the placement of ads on the search results pages on every major search engine—Google, Yahoo!, bing, ask.com and others—so that a consumer searching for terms including "WebMD," such as "WebMD and symptom checker," will be served an advertisement with the misleading headline "WebMD"—and in some instances a fabricated URL reference that includes the name "WebMD" (*e.g.*, [www.EverydayHealth/WebMD](http://www.EverydayHealth/WebMD))—which is designed to deceive the consumer into believing that clicking on the advertisement will take the consumer to WebMD. Instead, clicking on the advertisement that says "WebMD" takes the consumer to Everyday Health's website. Everyday Health thus actually uses the WebMD® trademark to disguise its website in order to confuse even careful consumers into believing that they are visiting a WebMD destination and there is some relationship between the advertisement and WebMD.

5. Everyday Health is engaging in these activities, on information and belief, in order to inflate the number of visits to its website. Everyday Health uses numbers—inflated by diverted and confused consumer visits—to misrepresent to advertisers and potential advertisers the volume of visitors to its website in order to charge more money for advertisements on its website. Furthermore, Everyday Health immediately earns money for this deception from

unknowing advertisers—who include some of the most well-known pharmaceutical and consumer brands in the world—by showing the misled visitors advertisements as soon as they are taken to Everyday Health’s website area disguised with WebMD’s trademark in the URL ([www.everydayhealth/WebMD](http://www.everydayhealth/WebMD)). Thus, even if the consumer realizes after clicking on the advertisement that he or she has been misled, Everyday Health already has made money on that visit. Moreover, since these customers accidentally visit Everyday Health’s website instead of WebMD’s, Everyday Health’s deception increases its own advertising revenue at WebMD’s expense.

6. Rather than competing fairly in the marketplace for visitors seeking online access to health information, Everyday Health has instead embarked on a scheme to masquerade as WebMD and thereby confuse consumers, divert advertising dollars, and deceive its own advertisers as to its purported “success” in the market by misappropriating the WebMD brand.

7. Everyday Health’s conduct constitutes trademark infringement, false advertising and unfair competition under the Lanham Act, 15 U.S.C. § 1114(a), 1125(a); trademark dilution under the Lanham Act, 15 U.S.C. § 1125(c) and New York State law; and deceptive acts, false advertising, and misrepresentation under New York State law. WebMD seeks a permanent injunction barring Everyday Health from engaging in such illegal acts, damages for the harm to WebMD’s business and reputation, an accounting of the profits that Everyday Health secured for itself from its wrongful conduct, and the attorneys’ fees and costs incurred by WebMD in enforcing these laws against Everyday Health’s willful misconduct.

## **II. PARTIES**

8. The plaintiff, WebMD, is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business at 111 Eighth Avenue, New York, New York.

9. On information and belief, the defendant, Everyday Health, is a limited liability company organized and existing under the laws of Delaware, with a principal place of business at 345 Hudson Street, New York, New York.

## **III. JURISDICTION AND VENUE**

10. This Court has subject matter jurisdiction over WebMD's claims because they arise under the Lanham Act, 15 U.S.C. § 1051 *et seq.* Subject matter jurisdiction is conferred by 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1338(b) (unfair competition), and 15 U.S.C. § 1121 (Lanham Act). This Court has supplemental jurisdiction over WebMD's state law claims pursuant to 28 U.S.C. § 1367.

11. This Court has personal jurisdiction over Everyday Health because Everyday Health is a citizen of the State of New York.

12. Venue is proper pursuant to 28 U.S.C. § 1391 because Everyday Health is resident in this State.

## **IV. FACTUAL BACKGROUND**

### **A. WebMD**

13. WebMD is the leading provider of health information services on the Internet. WebMD provides vital information to consumers, physicians, healthcare professionals, employers and health plans through its public and private online portals, mobile platforms and health-focused publications. WebMD provides consumers with an objective and trusted source of

information, as well as online tools that help consumers play an active role in managing their health.

14. WebMD is best known for its flagship site, [www.webmd.com](http://www.webmd.com), which offers an extraordinary range of trustworthy and credible health information for the benefit of consumers, including:

- WebMD Symptom Checker— An interactive graphic interface with advanced clinical decision-support rules that allows users to identify potential conditions associated with their physical symptoms, gender and age.
- WebMD News Center—Health news articles written by journalists and reviewed by WebMD’s professional staff of health experts.
- WebMD Editorial Features—Original content focusing on major health, wellness and lifestyle issues that are in the news or otherwise contemporary.
- WebMD Health and Wellness Center—Centralized locations for content and services for both editorial offerings and sponsor offerings focusing on topics related to health, wellness and lifestyle, featuring expert and medically reviewed information enabling the user to easily locate the top articles, news, videos, community features and health or wellness assessments for each topic.
- WebMD Health Guides and Wellness Guides—Guides to particular diseases or conditions with the most current symptom, diagnosis, treatment and care information, created by an editorial staff of professional health writers in collaboration with our proprietary physician network.
- WebMD Answers—A trusted environment for consumers to ask health-related questions and receive information from physicians and other experts, as well as from other consumers.
- WebMD Video—Originally produced multi-media content on a custom video player.
- Physician Directory—Enables users to find a physician based on the physician or practice name, specialty, zip code and distance.

15. Founded in 1996, the WebMD family of companies has earned its reputation by providing consistently reliable health-related information for over 15 years. WebMD delivers health information through several media including its public websites (which include

WebMD.com and Medscape.com), its mobile apps (such as WebMD, WebMD Baby, WebMD Pregnancy, WebMD Pain Coach, and WebMD Allergy), its award-winning WebMD The Magazine, available in print and digitally, and its private wellness website platforms licensed to employers and health plans.

16. According to a 2013 survey conducted by Millward Brown Brand Equity, WebMD is the “#1 Trusted & Recommended” brand in the entire United States. Because of WebMD’s reputation as an outstanding and trusted source of health information for consumers, WebMD reaches an extraordinary number of people. In May 2014, according to comScore, there were more than 63 million visitors to the WebMD Health Network.

17. WebMD’s reputation as a source of trusted health information is the result, in part, of WebMD’s strict quality control process. WebMD’s original editorial content is reviewed by medical editors for accuracy, objectivity, appropriateness of medical language and proper characterization of findings. WebMD’s website upholds traditional journalistic principles in reviewing and corroborating information from other sources. With respect to advertising and content provided by third parties on its sites, WebMD makes a clear distinction between news stories, articles and other content that WebMD creates or licenses and promotional information from its sponsors. This quality control and strict editorial process is designed to ensure that the health information that WebMD provides to consumers is objective, credible and accurate. As a result, WebMD is the only consumer-facing health information website accredited by URAC, it is certified by TRUSTe and complies with the principles of the Health on the Net Foundation’s Code of Conduct.

18. WebMD and its predecessor entities and affiliates have owned United States Trademark Registration Nos. 2,349,285 and 2,394,818 for the trademark WebMD® and used

that trademark in commerce since at least January 1998. True and accurate copies of the WebMD® registrations are attached as Exhibits 1 (Reg. No. 2,349,285) and 2 (Reg. No. 2,394,818).

19. WebMD has invested hundreds of millions of dollars in the WebMD® trademark, including through advertising, public and media relations, investments in content, content management and search engine optimization, industry events and conferences, customer and client forums and events, trade marketing, specialty marketing and WebMD The Magazine.

20. As a result of WebMD's substantial investment and its dedication to quality, the WebMD® mark has become famous and has amassed enormous value as an identifier of WebMD. The WebMD® trademark has earned substantial customer goodwill, making WebMD one of the first and most credible brands in the healthcare industry.

21. Information presented by WebMD is often quoted as an authoritative source of health information by the nation's leading news organizations, including CBS News, Fox News, and NBC News. The WebMD brand is also an established part of American popular culture; consistently referenced in print and online media, as well as in movies and on television. In 2013 alone, WebMD was mentioned on many of the most popular television shows, including: Comedy Central's The Colbert Report; ABC's Live with Kelly and Michael; CBS's Two Broke Girls; and NBC's Late Night with Jimmy Fallon.

22. Medscape.com is WebMD's flagship portal for physicians and other healthcare professionals and is organized by medical specialty, with each supported specialty having its own customized content. Medscape also includes areas for nurses, pharmacists, medical students, and members interested in medical policy and business of medicine topics. The Medscape portal provides articles written by its in-house team of professional journalists and editors, faculty from

widely respected academic and clinical institutions, and seasoned professional writers. Medscape news content is edited and managed by its editorial staff.

23. Medscape also provides original reference content prepared for Medscape by physician and pharmacist authors and reviewers from leading medical centers, in the following categories:

- Disease and Condition Articles—Evidence-based and physician-reviewed disease and condition articles are organized to answer clinical questions, as well as to provide in-depth information in support of diagnosis, treatment, and other clinical decision-making. Most of these articles are illustrated with clinical photos and radiographic images.
- Drug Reference—A drug reference database, with more than 2,200 monographs, for researching prescription and safety information on brand-name, generic and over-the-counter (OTC) drugs, including herbals and supplements.
- Drug Interaction Checker—A drug interaction checker that identifies more than 100,000 interactions for drugs, herbals and/or supplements, with detailed information from minor to contraindicated interactions
- Clinical Procedure Articles—More than 800 clinical procedure articles provide detailed instructions, and include videos and images to help clinicians with new techniques or to improve their skills in procedures they have previously performed.
- Image Collections—Image collections are visually engaging presentations of both common and uncommon diseases, case presentations, and current controversies in medicine. They are presented in a slideshow format and are designed to challenge and expand physicians' knowledge of clinically important topics.

24. WebMD and its predecessor entities and affiliates have used the MEDSCAPE® trademark since at least April 1995, and WebMD owns United States Trademark Registration No. 1,978,357 for that trademark. A true and accurate copy of the MEDSCAPE® registration is attached as Exhibit 3.

25. As a result of WebMD's extensive promotion of the WebMD® and MEDSCAPE® marks, its continuous and exclusive use of the WebMD® and MEDSCAPE® marks, and the exacting processes used by WebMD to insure the accuracy and completeness of the information it provides, the WebMD® and MEDSCAPE® trademarks have acquired



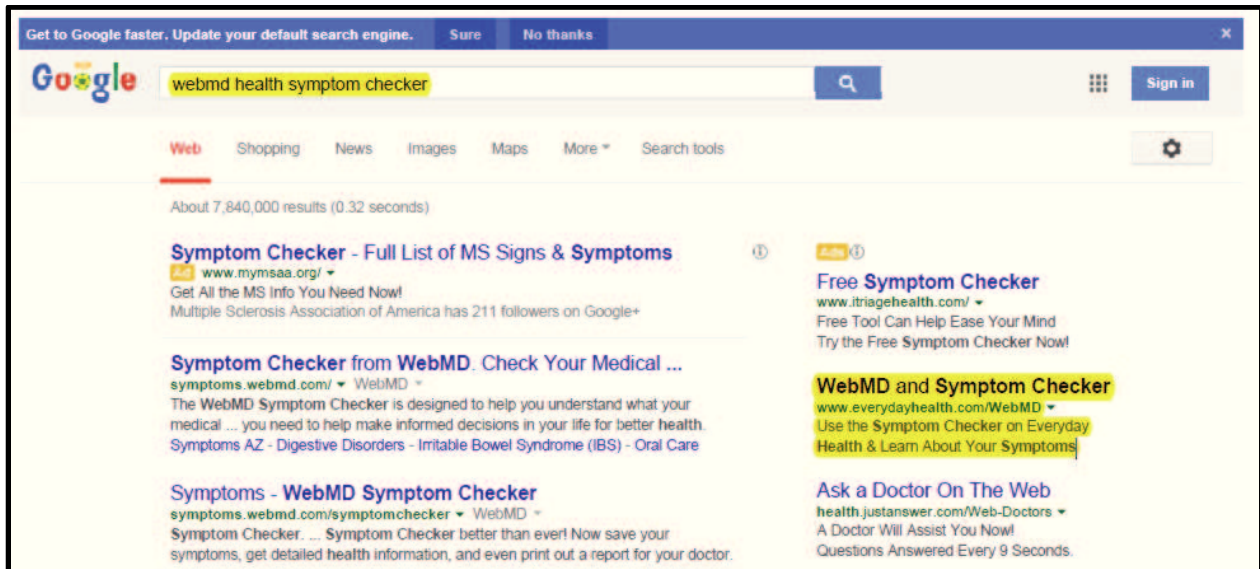
enormous value, and quickly identify WebMD as the source of the high-quality information and services provided using those trademarks.

**B. Everyday Health's Misappropriation and Infringement of WebMD's Intellectual Property**

26. Apparently unable to generate its own brand recognition or consumer usage through its own trademarks, Everyday Health decided upon a scheme to use the broad consumer recognition of the WebMD® trademark and the goodwill associated with it, without authorization, in order to further its own business objectives. In particular, Everyday Health has begun using the WebMD® mark to divert consumers seeking information from WebMD's websites, and divert them instead to Everyday Health's website.

27. That is, Everyday Health has embarked on an extensive plan to misuse reputable search engines to purchase health-related search terms for advertising, so that a consumer searching for WebMD-authored health information receives an advertisement when he or she searches for anything including the trademark WebMD®. The advertisement that the consumer receives, however, does not use Everyday Health's own trademarks to then attract the consumer to Everyday Health's site. Rather than encountering an Everyday Health trademark in the headline of the ad, consumers instead see the WebMD® trademark as the headline—plainly suggesting that clicking on the advertisement will take the user to the famous and highly trusted WebMD website. A consumer who is deceived into clicking on the ad, however, is diverted instead to Everyday Health's website, which has nothing to do with WebMD, is not licensed by WebMD, and indeed has no relationship whatsoever with WebMD.

28. For example, a search on the Google search engine for “WebMD health symptom checker” returns a paid ad with the prominent headline “WebMD and Symptom Checker,” shown below:



29. Reasonable consumers will assume from the headline of the ad—“WebMD and Symptom Checker”—that by clicking on it the consumer will be taken to WebMD’s trusted website for accurate and useful health information. Instead, when a user clicks on the ad shown, he or she is taken to a page on Everyday Health’s website, shown below:


ALWAYS CHOOSE WELL

## Welcome to the Everyday Health Network!

Everyday Health is the largest provider of online health solutions, with medically reviewed content from the Web's most trusted health sites. [Learn More.](#)

### Webmd Symptom Checker

Ads by Google

[Check Your Symptoms](#)  
Learn What May Cause Your Symptoms. Try Our Online Symptoms Checker!  
[lrlagehealth.com](#)

[Are You Type 2 Diabetic?](#)  
New Clinical Study in Boston. See If You Qualify & Learn More.  
[endobametrals.com](#)

[Multiple Sclerosis Signs](#)  
Worried About Multiple Sclerosis? See Causes, Symptoms & More Here.  
[symptomfind.com/MultipleSclerosis](#)

### Check Your Symptoms Here!



The Doctor is In!  
No matter the type of symptoms you're experiencing, use our interactive video tool to learn about possible causes and treatments – and whether you need to see a doctor.  
Enter your symptom below and click "GO!"

### Top Articles from Everyday Health

[Dizziness - Symptom Checker - Everyday Health](#)  
Dr. Schueler and the Symptom Checker Stephen Schueler, MD, is an emergency physician, teacher, and author. Although he designed the Symptom Checker to feel like a real emergency room intake interview, it is a computer program and not a live doctor. Its recommendations should not be used as a basis for delaying, or as a substitute for, evaluation and treatment by a physician. Get more information. Tell Dr. [www.everydayhealth.com](#)

[Headache - Symptom Checker - Everyday Health](#)  
Dr. Schueler and the Symptom Checker Stephen Schueler, MD, is an emergency physician, teacher, and author. Although he designed the Symptom Checker to feel like a real emergency room intake interview, it is a computer program and not a live doctor. Its recommendations should not be used as a basis for delaying, or as a substitute for, evaluation and treatment by a physician. Get more information. A [www.everydayhealth.com](#)

Ads By Google:

[Rheumatoid Arthritis](#)  
Top 5 treatments for your rheumatoid arthritis!  
[medicalhelponline.net](#)

[How To Prevent Migraines](#)  
High-Quality Migraine Supplement. Get Your Free 2-Week Supply Now.  
[migrainetreatmentgroup.com](#)

[3 Early Signs of Dementia](#)  
Doctor: Know These 3 Warning Signs You're About to Suffer Dementia  
[w3.playlockwellness.com](#)

### More Expert Content from Everyday Health

[Nausea - Symptom Checker - Everyday Health](#)  
Dr. Schueler and the Symptom Checker Stephen Schueler, MD, is an emergency physician, teacher, and author. Although he designed the Symptom Checker to feel like a real emergency room intake interview, it is a [www.everydayhealth.com](#)

[Back Pain - Symptom Checker - Everyday Health](#)  
Dr. Schueler and the Symptom Checker Stephen Schueler, MD, is an emergency physician, teacher, and author. Although he designed the Symptom Checker to feel like a real emergency room intake interview, it is a [www.everydayhealth.com](#)

[Neck Pain - Symptom Checker - Everyday Health](#)  
Dr. Schueler and the Symptom Checker Stephen Schueler, MD, is an emergency physician, teacher, and

### Related Search Terms

- health symptom checker
- symptom relieving factors
- emergency room physician
- abdominal pain symptom checker
- symptom distribution
- yeast infection symptoms
- chest pain symptom checker
- symptom severity
- decision making process
- lung cancer symptom checker

Ads by Google

[Ask a Doctor Now](#)  
100+ Doctors are Online to Answer. Get Instant Answers. No Waiting.  
[healthcaremagic.com/AskDoctorNow](#)

[End Leg Cramps in 1 Min.](#)  
Proven old Amish remedy ends night time leg or foot cramps in 1 minute  
[www.stoplegcramps.com](#)

[1 Trick to Fibromyalgia](#)  
See How to Relieve Fibromyalgia With This Fast and Easy Trick  
[www.fibromyalgiapeople.com](#)

[Nursing School Online](#)  
Earn Your RN To BSN in 3 Semesters. Online, Affordable & User Friendly!  
[www.chamberlain.edu](#)

ADVERTISEMENT



**ampyra**  
AMPYRACONNECT™

**I will walk on**

**Walking better matters.**

Not everyone responds to AMPYRA.  
Individual results may vary.  
See important safety information below.

**Take a walking self-assessment**

**Medication Guide**

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AMP0064

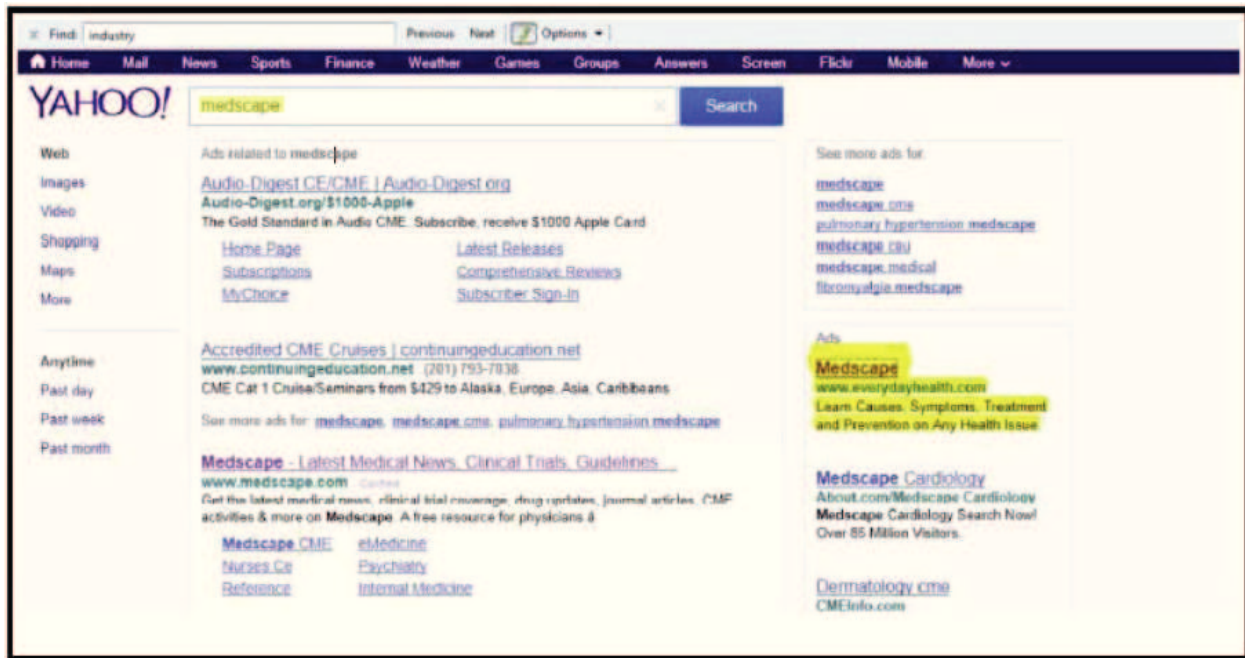
### Topic Guides for More Information

30. On this Everyday Health web page, the most prominent words, centrally placed, are “Webmd Symptom Checker,” highlighted above. Unbeknownst to the consumer, he or she is not on any website that has anything to do with WebMD. In fact, the consumer sees the words “Welcome to the Everyday Health Network!” above the words “Webmd Symptom Checker” suggesting—incorrectly—that WebMD is somehow connected to the Everyday Health Network.

31. In addition to containing advertisements for which Everyday Health is paid at the expense of WebMD, this shoddy-looking Everyday Health “landing page” also includes a symptom checker prominently placed in the middle of the page, highlighted in the screenshot above. In fact, after entering a symptom into this symptom checker, the consumer is unwittingly taken to the “regular” Everyday Health symptom checker page on Everyday Health’s main site, and is asked to start the process again on the Everyday Health symptom checker that has nothing whatsoever to do with WebMD, and has never been vetted by WebMD’s extensive quality controls that have garnered WebMD its well-deserved reputation.

32. In addition, the Everyday Health “landing page” also includes a search box, highlighted at the upper right in the screenshot above, designed to dupe the consumer into thinking that he or she has arrived at the WebMD Symptom Checker. Within the search box Everyday Health has actually pre-populated the words “webmd symptom checker,” directly misinforming the user that he or she is at the genuine WebMD Symptom Checker.

33. Similarly, a search on the Yahoo! search engine for “medscape” returns an Everyday Health paid advertisement entitled “Medscape”:



34. Reasonable health professionals will assume from the prominent heading of the advertisement—“Medscape”—that, by clicking, he or she will be taken to WebMD’s trusted Medscape website for accurate and useful health information. Instead, when a user clicks on the advertisement shown above, he or she is taken to the following page on Everyday Health’s website:



**everyday HEALTH** ALWAYS CHOOSE WELL

**Medscape** SEARCH

**Welcome to the Everyday Health Network!**  
Everyday Health is the largest provider of online health solutions, with medically reviewed content from the Web's most trusted health sites. [Learn More.](#)

**Medscape**

Ads by Google  
**Are You Type 2 Diabetic?**  
Now Accepting Enrollment for Type 2 Diabetes Clinical Trial in Boston.  
[endobariaternal.com](#)

**Top Articles from Everyday Health**

**About the Everyday Health Team**  
Amy O'Connor, Editorial Director Before joining Everyday Health, Amy served as Editor in Chief of Health.com where she earned multiple awards for editorial excellence, including a National Magazine Award nomination for Personal Service on the Web. She has held top editorial positions at many national consumer publications, including Glamour, Prevention, Self, Mirabella, and Vegetarian Times, and has [www.everydayhealth.com](#)

**Lamotrigine**  
Lamotrigine is an anti-epileptic medication, also called an anticonvulsant. Lamotrigine is used either alone or in combination with other medications to treat epileptic seizures in adults and children. Lamotrigine is also used to delay mood episodes in adults with bipolar disorder (manic depression). The immediate-release form of lamotrigine (Lamictal, Lamictal ODT) can be used in children as young as 2.  
[www.everydayhealth.com](#)

**Vaccine to Prevent Diarrhea Helps at Home or Hospital**  
Monday, Jan. 24, 2011 — A vaccine that can protect healthy kids from a virus that causes diarrhea and vomiting can also help prevent the spread of the bug known as rotavirus in hospitals. Researchers who studied medical charts from kids admitted to a big city pediatric hospital in 2007-2008 found that the rate of rotavirus infections dropped by 60 percent after kids started getting routine vaccinations.  
[www.everydayhealth.com](#)

**Psoriasis Treatment Could Help Your Heart, Too**  
TUESDAY, March 20, 2012 — We're often taught that good heart health starts from the inside out, with a balanced diet, aerobic exercise, and stable blood pressure and glucose levels. For the 7.5 million Americans currently living with psoriasis, however, working "outside in" may be necessary, too. Experts have long known that people with psoriasis are at increased risk for cardiovascular  
[www.everydayhealth.com](#)

Ads By Google

**End Leg Cramps in 1 Min.**  
Proven old Amish remedy ends night time leg or foot cramps in 1 minute  
[www.stoplegcramps.com](#)

**1 Trick to Fibromyalgia**  
See How to Relieve Fibromyalgia With This Fast and Easy Trick  
[www.fibrowellnesspeople.com](#)

**Ask a Doctor Now**

**Related Search Results**

- hemophagocytosis
- new york times
- total mesorectal excision
- medical professionals
- high vegetable diet

**Get Bethenny Franke's Party Guide!**

**Hosting a Party?**  
Bethenny shares her go-to party food and cocktail recipes plus tips on how to have fun at a party but not ruin your diet.  
[Get Bethenny's Skinnygirl party tips now!](#)

Ads by Google

**3 Early Signs of Dementia**  
Doctor: Know These 3 Warning Signs You're About to Suffer Dementia  
[v3.blaylockwellness.com](#)

**"How I Ended Balanitis,"**  
Read Dave's Story About One Simple Trick To End Severe Balanitis Fast  
[www.ernuaid.com/balanitis\\_treatment](#)

ADVERTISEMENT

**Mirena**  
(levonorgestrel-releasing intrauterine system)  
[Learn More >](#)

**Indication and Important Safety Information**  
For important risk and use information about Mirena, please see the **Full Prescribing Information.**

**FULL PRESCRIBING INFORMATION**

35. On this Everyday Health web page, the most prominent words, centrally placed, are “Medscape.” This Everyday Health “landing page” likewise includes a search box at the upper right containing the word “medscape.” Unbeknownst to the searcher, he or she is not, in fact on any website that has anything to do with WebMD or its Medscape site, and searching in the box labeled “medscape” will not take the searcher to any page having anything to do with WebMD or its Medscape site.

36. Everyday Health's campaign extends over all of the most popular search engines. Screenshots of similar search engine results and the corresponding landing pages are attached in the following exhibits:

- Attached as Exhibit 4 is a June 17, 2014 screenshot of a search on aol.com for "webmd information" and the Everyday Health landing page from the "WebMD and Health Info" paid link, including an advertisement for Arena Pharmaceutical's Belviq® pharmaceutical product.
- Attached as Exhibit 5 is a June 17, 2014 screenshot of a search on aol.com for "webmd symptom checker" and the Everyday Health landing page from the "WebMD and Symptom Checker" paid link, including an advertisement for Acorda Therapeutic's Ampyra® pharmaceutical product.
- Attached as Exhibit 6 is a June 17, 2014 screenshot of a search on google.com for "webmd health drugs information" and the Everyday Health landing page from the "WebMD and Health Info" paid link, including an advertisement for Bayer HealthCare Pharmaceuticals's Mirena® pharmaceutical product.
- Attached as Exhibit 7 is a June 17, 2014 screenshot of a search on google.com for "webmd health symptom checker" and the Everyday Health landing page from the "WebMD and Symptom Checker" paid link, including an advertisement for Acorda Therapeutic's Ampyra® pharmaceutical product.
- Attached as Exhibit 8 is a June 17, 2014 screenshot of a search on ask.com for "webmd information" and the Everyday Health landing page from the "WebMD and Health Info" paid link, including an advertisement for Bayer HealthCare Pharmaceuticals's Mirena® pharmaceutical product.
- Attached as Exhibit 9 is a June 17, 2014 screenshot of a search on ask.com for "webmd health information" and the Everyday Health landing page from the "WebMD and Health Info" paid link, including an advertisement for Bayer HealthCare Pharmaceuticals's Mirena® pharmaceutical product.
- Attached as Exhibit 10 is a June 17, 2014 screenshot of a search on ask.com for "webmd health symptom checker" and the Everyday Health landing page from the "WebMD and Symptom Checker" paid link, including an advertisement for Acorda Therapeutic's Ampyra® pharmaceutical product.
- Attached as Exhibit 11 is a June 5, 2014 screenshot of a search on yahoo.com for "webmd health symptom checker" and the Everyday Health landing page from the "Symptom Checker & Web MD" paid link.
- Attached as Exhibit 12 is a June 5, 2014 screenshot of a search on yahoo.com for "webmd information" and the Everyday Health landing page from the "Web MD

& Symptom Checker” paid link, including an advertisement for Abbott Laboratories’s iLasik™ medical devices.

- Attached as Exhibit 13 is a June 18, 2014 screenshot of a search on yahoo.com for “webmd strep throat” and the Everyday Health landing page from the “Webmd Strep Throat” paid link, including an advertisement for Sunovion Pharmaceuticals Inc.’s Latuda® pharmaceutical product.
- Attached as Exhibit 14 is a June 11, 2014 screenshot of a search on yahoo.com for “medscape” and a June 17, 2014 Everyday Health landing page from the “Medscape” paid link, including an advertisement for Bayer HealthCare Pharmaceuticals’s Mirena® pharmaceutical product.

37. Although the pages reached from the paid ads also display the URL [www.everydayhealth.com/WebMD](http://www.everydayhealth.com/WebMD), that URL does not actually exist. Typing in that URL directly will lead the user to an error page. The URL actually embedded into the advertisement is the one for Everyday Health’s landing page shown above. Since there is, in fact, no such URL, and since Everyday Health obviously knows it, the display of the URL using “WebMD” can only have been established to confuse even careful consumers (those who pay attention to the URL associated with the ad) that Everyday Health’s website is somehow associated with the famous WebMD® or MEDSCAPE® trademarks.

38. Everyday Health’s pervasive misuse of the WebMD® and MEDSCAPE® trademarks is an unlawful attempt to inflate its own profits. For example, on information and belief, advertisers pay Everyday Health for impressions—an impression being each advertisement on a page that is served to the computer or mobile device of a user (if a user gets a page with 4 advertisements that would be 4 impressions). By diverting consumers to Everyday Health’s site—even if those consumers ultimately realize that they are on an imitation site and not on WebMD’s site—Everyday Health will be paid by unsuspecting advertisers for a consumer’s detour to the Everyday Health website where the consumer will be presented with



Everyday Health pages with the ads before there is any opportunity for the consumer to even realize that he or she has been misled.

39. For every page of WebMD that contains advertisements and that is viewed by a user, WebMD is entitled to receive payment from the advertisers whose advertisements are served with such page.

40. For every page of WebMD that is not served to a user because the user is misled into getting a page of Everyday Health, WebMD loses advertising revenue.

41. In this way, Everyday Health confuses consumers into visiting Everyday Health's website when they think they are going to the WebMD site, misleads advertisers into believing that they are paying for real impressions rather than mistaken clicks by deceived users, inflates its consumer traffic and misleads advertisers as to Everyday Health's scale and ability to deliver on marketing promises. Everyday Health hides its true financial condition from its shareholders, investors and the market by inflating its advertising revenue and claiming it to be a legitimate reflection of the value of its "brand."

42. As a result of Everyday Health's misuse of the WebMD® and MEDSCAPE® trademarks, consumers may mistakenly associate content published by Everyday Health—content that does not undergo the editorial process required by WebMD—with WebMD content, thereby harming WebMD's reputation as a trustworthy provider of health information.

43. As a result of Everyday Health's misuse of the WebMD® trademark in the branding and URL of the shoddy-looking landing pages, including the Everyday Health symptom checker, Everyday Health may cause users to not experience the genuine WebMD product and thereby form a lesser opinion of WebMD, thus causing WebMD to suffer dilution of its brand.

44. Upon information and belief, as a direct competitor in the health services information market, Everyday Health has, at all relevant times, possessed actual knowledge of the WebMD® and MEDSCAPE marks. Everyday Health also is well aware of its responsibilities under the laws of the United States and the State of New York designed to protect the public from misleading information, including misleading information that could affect the health of millions of consumers. Indeed, in Everyday Health's parent company's public offering document filed with the Securities and Exchange Commission, Everyday Health acknowledged the importance of trademark rights, and expressly identified in its "risk factors" that even the use by competitors of a company's trademarks through internet search engine advertising programs can impede the ability to build brand identity and lead to confusion by its users and diminish the value of its brand.

45. Accordingly, Everyday Health's complex web of deception could only have been intentionally designed to capitalize on the fame and recognition of the WebMD® and MEDSCAPE® trademarks, and entitles WebMD to a disgorgement of Everyday Health's ill-gotten gains, and reimbursement of WebMD's attorneys' fees and costs.

46. Everyday Health is not licensed, authorized, sponsored, endorsed, or approved by WebMD to use the distinctive WebMD® and MEDSCAPE® marks in association with Everyday Health's products or services.

47. Accordingly, WebMD seeks injunctive relief and damages to prevent the defendant from continuing to misappropriate WebMD's intellectual property, and to prevent consumers of health information services from being further confused, deceived, and potentially harmed by Everyday Health's infringing conduct.

**FIRST CLAIM FOR RELIEF**  
**(Trademark Infringement: 15 U.S.C. § 1114(a))**

48. WebMD incorporates the allegations contained in paragraphs 1-47 as if fully set forth herein.

49. WebMD is the owner of the valid and enforceable federally registered trademarks United States Trademark Nos. 2,349,285 and 2,394,818 (WebMD®) and United States Trademark Registration No. 1,978,357 (MEDSCAPE®).

50. Upon information and belief, Everyday Health's activities as set forth above with respect to WebMD's registered trademarks have already caused, and will continue to cause confusion, mistake or deception as to the source, origin or sponsorship of WebMD's products and services.

51. Upon information and belief, the activities of Everyday Health were intended to lead, and have already led, consumers and health professionals to conclude, incorrectly, that Everyday Health's products and services originate with, are sponsored by, or are authorized by or licensed or somehow related to WebMD, to the detriment of WebMD.

52. Everyday Health's unauthorized use of the WebMD® and MEDSCAPE® marks in commerce in the United States constitutes trademark infringement in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114(a).

53. Because of Everyday Health's wrongful conduct, WebMD has suffered harm, and unless Everyday Health's conduct is permanently enjoined, will continue to suffer, actual damages and irreparable harm, as to which it has no adequate remedy at law.

**SECOND CLAIM FOR RELIEF**  
**(Federal Unfair Competition: 15 U.S.C. § 1125(a))**

54. WebMD incorporates the allegations contained in paragraphs 1-53 as if fully set forth herein.

55. The WebMD® and MEDSCAPE® trademarks are inherently distinctive and/or have acquired secondary meaning among the public.

56. As a result of Everyday Health's misuse of the WebMD® and MEDSCAPE® marks, consumers are likely to be confused, mistaken or deceived as to the affiliation, connection and/or association of Everyday Health's products and services with WebMD, or as to the origin, sponsorship, or approval of Everyday Health's products and services, and/or as to the nature, characteristics or qualities of WebMD's products and services.

57. Everyday Health's wrongful conduct, including as described above, constitutes unfair competition in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

58. Because of Everyday Health's wrongful conduct, WebMD has suffered harm, and unless Everyday Health's conduct is permanently enjoined, will continue to suffer actual damages and irreparable harm, as to which it has no adequate remedy at law.

**THIRD CLAIM FOR RELIEF**  
**(Dilution, 15 U.S.C. § 1125(c))**

59. WebMD incorporates the allegations contained in paragraphs 1-58 as if fully set forth herein.

60. WebMD's registered trademark WebMD® is distinctive and famous, and has been used in connection with the promotion and marketing of WebMD's products and services for over 15 years.

61. Upon information and belief, Everyday Health began misappropriating the WebMD® trademark subsequent to WebMD's trademark becoming famous, thereby causing dilution of the WebMD® trademark, in violation of 15 U.S.C. § 1125(c).

62. As a result of Everyday Health's wrongful conduct, WebMD has suffered harm, and, unless Everyday Health's conduct is permanently enjoined, will continue to suffer actual damages and irreparable harm, as to which it has no adequate remedy at law.

**FOURTH CLAIM FOR RELIEF**  
**(Unfair Competition Under New York Common Law)**

63. WebMD incorporates the allegations contained in paragraphs 1-62 as if fully set forth herein.

64. Everyday Health's misuse of the WebMD® and MEDSCAPE® marks is likely to cause confusion or to deceive users as to the origin of its products and services.

65. Everyday Health's wrongful conduct, as described above, constitutes unfair competition in violation of New York common law.

66. On information and belief, Everyday Health's wrongful conduct, including as described above, was willful, knowing, and in bad faith.

67. As a result of Everyday Health's wrongful conduct, WebMD has suffered harm, and, unless Everyday Health's conduct is permanently enjoined, will continue to suffer actual damages and irreparable harm, as to which it has no adequate remedy at law.

**FIFTH CLAIM FOR RELIEF**  
**(Deceptive Acts and Practices: New York Gen. Bus. L. § 349)**

68. WebMD incorporates the allegations contained in paragraphs 1-67 as if fully set forth herein.

69. Everyday Health's misuse of the WebMD® and MEDSCAPE® marks, as described above, harms consumers by providing health information that appears to deliver the trustworthiness and other benefits associated with WebMD, including its exacting editorial policies and accreditations, but which, in fact, do not deliver such benefits, potentially injuring the public health.

70. Everyday Health's wrongful conduct, as described above, constitutes deceptive acts or practices in violation of Section 349 of New York's General Business Law.

71. On information and belief, Everyday Health's wrongful conduct, including as described above, was willful, knowing, and in bad faith.

72. As a result of Everyday Health's wrongful conduct, WebMD has suffered harm, and, unless Everyday Health's conduct is permanently enjoined, will continue to suffer actual damages and irreparable harm, as to which it has no adequate remedy at law.

**SIXTH CLAIM FOR RELIEF**  
**(False Advertising: New York Gen. Bus. L. § 350)**

73. WebMD incorporates the allegations contained in paragraphs 1-72 as if fully set forth herein.

74. Everyday Health's misuse of the WebMD® and MEDSCAPE® marks, as described above, harms consumers by providing health information that appears to deliver the trustworthiness and other benefits of WebMD's exacting editorial policies and accreditations, but which, in fact, does not deliver such benefits, potentially injuring the public health.

75. Everyday Health's wrongful conduct, as described above, is materially misleading and constitutes false advertising in violation of Section 350 of New York's General Business Law.

76. On information and belief, Everyday Health's wrongful conduct, including as described above, was willful, knowing, and in bad faith.

77. As a result of Everyday Health's wrongful conduct, WebMD has suffered harm, and, unless Everyday Health's conduct is permanently enjoined, will continue to suffer actual damages and irreparable harm, as to which it has no adequate remedy at law.

**SEVENTH CLAIM FOR RELIEF**

**(Injury to Reputation and Business or Dilution: N.Y. Gen. Bus. L. § 360-l)**

78. WebMD incorporates the allegations contained in paragraphs 1-77 as if fully set forth herein.

79. The WebMD® and MEDSCAPE® trademarks are distinctive, and have been used in connection with the promotion and marketing of WebMD's products and services for over 15 years.

80. Everyday Health's misuse of the WebMD® and MEDSCAPE® marks is likely to cause injury to WebMD's business or reputation or dilution of the distinctive quality of the WebMD® and MEDSCAPE® marks in violation of Section 360-l of New York's General Business Law.

81. As a result of Everyday Health's wrongful conduct, WebMD has suffered harm, and, unless Everyday Health's conduct is permanently enjoined, will continue to suffer actual damages and irreparable harm, as to which it has no adequate remedy at law.

**EIGHTH CLAIM FOR RELIEF**

**(Use of Name or Address With Intent to Deceive: N.Y. Gen. Bus. L. § 133)**

82. WebMD incorporates the allegations contained in paragraphs 1-81 as if fully set forth herein.

83. On information and belief, Everyday Health's misuse of the names WebMD® and MEDSCAPE® for purposes of trade was done with the intention and purpose of deceiving and misleading the public as to the identity of Everyday Health, or as to a connection between Everyday Health and WebMD, or that Everyday Health and WebMD are one and the same, or that Everyday Health is affiliated with, sponsored by, or otherwise under common control of WebMD, and with the further intention of passing Everyday Health off as WebMD, and in

inducing the public into utilizing Everyday Health's business, believing the same to be carried out by or sponsored by WebMD or someone under WebMD's control.

84. The above acts of Everyday Health constitute violations of New York General Business Law § 133.

85. The wrongful acts of Everyday Health have caused, and unless enjoined, will continue to cause WebMD and the public to suffer irreparable injury and damage, for which there is no adequate remedy at law.

### **PRAYER FOR RELIEF**

WHEREFORE, WebMD prays that this Court grant the following relief:

1. Enter judgment in favor of WebMD on each of its claims;
2. Permanently enjoin Everyday Health and its predecessors, successors, divisions, subsidiaries, or joint ventures thereof, together with any and all parent or affiliate companies or corporations, and all officers, directors, employees, agents, attorneys, representatives, and those acting in privity or in concert with Everyday Health, or on its behalf, from further infringing WebMD's WebMD® and MEDSCAPE® marks or from using any other trademark or trade dress that is a colorable imitation of WebMD's WebMD® and MEDSCAPE® marks, or is likely to be confused with the WebMD® and MEDSCAPE® marks, and from engaging in further unfair competition and unfair or deceptive acts or practices;
3. Award WebMD damages it has sustained as a result of Everyday Health's infringement and/or disgorge the profits which Everyday Health has made from such infringement, of an amount to be determined;
4. Treble the damages assessed in light of Everyday Health's willful infringement;
5. Award WebMD its costs and reasonable attorneys' fees;
6. Award WebMD interest on any past damages; and



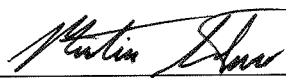
7. Award WebMD such other relief as the Court deems just and proper.

**PLAINTIFF CLAIMS A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.**

Respectfully Submitted,

WebMD LLC

By its attorneys,



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Martin E. Gilmore  
Wilmer Cutler Pickering Hale and Dorr LLP  
7 World Trade Center  
250 Greenwich Street  
New York, NY 10007  
Ph. (212) 230-8800  
Fax (212) 230-8800  
Email: martin.gilmore@wilmerhale.com

*Of Counsel:*

Mark G. Matuschak  
Vinita Ferrera  
Wilmer Cutler Pickering Hale and Dorr LLP  
60 State Street  
Boston, MA 02109  
Ph. (617) 526-6000  
Fax (617) 526-5000  
Email: mark.matuschak@wilmerhale.com  
vinita.ferrera@wilmerhale.com

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